

REFERENCE TITLE: domestic farm wineries; direct shipment

State of Arizona
House of Representatives
Forty-seventh Legislature
Second Regular Session
2006

HB 2500

Introduced by
Representatives Mason, Carpenter, Downing, Nelson, O'Halleran, Sinema,
Senators Cheuvront, Leff: Representatives Biggs, Brown, Burns J, Jones,
Kirkpatrick, Lujan, McClure, Murphy, Senators Aboud, Bee, Cannell, Flake

AN ACT

AMENDING SECTIONS 4-101 AND 4-205.04, ARIZONA REVISED STATUTES; RELATING TO
SPIRITUOUS LIQUOR LICENSES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 4-101, Arizona Revised Statutes, is amended to
3 read:

4 4-101. Definitions

5 In this title, unless the context otherwise requires:

6 1. "Act of violence" means an incident consisting of a riot, a brawl
7 or a disturbance, in which bodily injuries are sustained by any person and
8 such injuries would be obvious to a reasonable person, or tumultuous conduct
9 of sufficient intensity as to require the intervention of a peace officer to
10 restore normal order, or an incident in which a weapon is brandished,
11 displayed or used. Act of violence does not include the use of nonlethal
12 devices by a peace officer.

13 2. "Aggrieved party" means a person who resides at, owns or leases
14 property within a one mile radius of a premises proposed to be licensed and
15 who filed a written request with the department to speak in favor of or
16 opposition to the issuance of the license no later than sixty days after the
17 filing of the application or fifteen days after action by the local governing
18 body, whichever is later.

19 3. "Beer" means any beverage obtained by the alcoholic fermentation,
20 infusion or decoction of barley malt, hops, or other ingredients not
21 drinkable, or any combination of them.

22 4. "Board" means the state liquor board.

23 5. "Bona fide guest" means:

24 (a) A person who is actually a houseguest or a person whose presence
25 as a guest is in response to a specific and personal invitation.

26 (b) In the case of a club that meets the criteria prescribed in
27 paragraph 7, subdivision (a) of this section, a current member of the armed
28 services of the United States who presents proper military identification and
29 any member of a recognized veterans' organization of any country allied with
30 the United States during current or past wars or through treaty arrangements.

31 6. "Broken package" means any container of spirituous liquor on which
32 the United States tax seal has been broken or removed, or from which the cap,
33 cork or seal placed thereupon by the manufacturer has been removed.

34 7. "Club" includes any of the following organizations where the sale
35 of spirituous liquor for consumption on the premises is made to members only:

36 (a) A post, chapter, camp or other local unit composed solely of
37 veterans and its duly recognized auxiliary which has been chartered by the
38 Congress of the United States for patriotic, fraternal or benevolent purposes
39 and which has, as the owner, lessee or occupant, operated an establishment
40 for that purpose in this state.

41 (b) A chapter, aerie, parlor, lodge or other local unit of an American
42 national fraternal organization which has as the owner, lessee or occupant
43 operated an establishment for fraternal purposes in this state. An American
44 national fraternal organization as used in this subdivision shall actively

1 operate in not less than thirty-six states or have been in active continuous
2 existence for not less than twenty years.

3 (c) A hall or building association of a local unit mentioned in
4 subdivisions (a) and (b) of this paragraph, all of the capital stock of which
5 is owned by the local unit or the members, and which operates the clubroom
6 facilities of the local unit.

7 (d) A golf club which has more than fifty bona fide members and which
8 owns, maintains or operates a bona fide golf links together with a clubhouse.

9 (e) A social club with more than one hundred bona fide members who are
10 actual residents of the county in which it is located, that owns, maintains
11 or operates club quarters, is authorized and incorporated to operate as a
12 nonprofit club under the laws of this state, and has been continuously
13 incorporated and operating for a period of not less than one year. The club
14 shall have had, during this one year period, a bona fide membership with
15 regular meetings conducted at least once each month, and the membership shall
16 be and shall have been actively engaged in carrying out the objects of the
17 club. The club's membership shall consist of bona fide dues paying members
18 paying at least six dollars per year, payable monthly, quarterly or annually,
19 which have been recorded by the secretary of the club, and the members at the
20 time of application for a club license shall be in good standing having for
21 at least one full year paid dues. At least fifty-one per cent of the members
22 shall have signified their intention to secure a social club license by
23 personally signing a petition, on a form prescribed by the board, which shall
24 also include the correct mailing address of each signer. The petition shall
25 not have been signed by a member at a date earlier than thirty days prior to
26 the filing of the petition. The club shall qualify for exemption from the
27 payment of state income taxes under title 43. It is the intent of this
28 paragraph that a license shall not be granted to a club which is, or has
29 been, primarily formed or activated to obtain a license to sell liquor, but
30 solely to a bona fide club, where the sale of liquor is incidental to the
31 main purposes of the club.

32 (f) An airline club operated by or for airlines which are certificated
33 by the United States government and which maintain or operate club quarters
34 located at airports with international status.

35 8. "Company" or "association", when used in reference to a
36 corporation, includes successors or assigns.

37 9. "Control" means the power to direct or cause the direction of the
38 management and policies of an applicant, licensee or controlling person,
39 whether through the ownership of voting securities or a partnership interest,
40 by agreement or otherwise. Control is presumed to exist if a person has the
41 direct or indirect ownership of or power to vote ten per cent or more of the
42 outstanding voting securities of the applicant, licensee or controlling
43 person or to control in any manner the election of one or more of the
44 directors of the applicant, licensee or controlling person. In the case of a
45 partnership, control is presumed to mean the general partner or a limited

1 partner who holds ten per cent or more of the voting rights of the
 2 partnership. For the purposes of determining the percentage of voting
 3 securities owned, controlled or held by a person, there shall be aggregated
 4 with the voting securities attributed to the person the voting securities of
 5 any other person directly or indirectly controlling, controlled by or under
 6 common control with the other person, or by an officer, partner, employee or
 7 agent of the person or by a spouse, parent or child of the person. Control
 8 is also presumed to exist if a creditor of the applicant, licensee or
 9 controlling person holds a beneficial interest in ten per cent or more of the
 10 liabilities of the licensee or controlling person.

11 10. "Controlling person" means a person directly or indirectly
 12 possessing control of an applicant or licensee.

13 11. "Department" means the department of liquor licenses and control.

14 12. "Director" means the director of the department of liquor licenses
 15 and control.

16 13. "Distilled spirits" includes alcohol, brandy, whiskey, rum,
 17 tequila, mescal, gin, absinthe, a compound or mixture of any of them or of
 18 any of them with any vegetable or other substance, alcohol bitters, bitters
 19 containing alcohol, fruits preserved in ardent spirits, and any alcoholic
 20 mixture or preparation, whether patented or otherwise, which may in
 21 sufficient quantities produce intoxication.

22 14. "DOMESTIC FARM WINERY" MEANS A WINERY IN THE UNITED STATES OR IN A
 23 TERRITORY OR POSSESSION OF THE UNITED STATES THAT MEETS THE REQUIREMENTS OF
 24 SECTION 4-205.04.

25 ~~14.~~ 15. "Employee" means any person who performs any service on
 26 licensed premises on a full-time, part-time or contract basis with consent of
 27 the licensee, whether or not the person is denominated an employee,
 28 independent contractor or otherwise. Employee does not include a person
 29 exclusively on the premises for musical or vocal performances, for repair or
 30 maintenance of the premises or for the delivery of goods to the licensee.

31 ~~15.~~ 16. "Government license" means a license to serve and sell
 32 spirituous liquor on specified premises available only to a county, city,
 33 town or state university or the Arizona coliseum and exposition center upon
 34 application by the governing body of a county, city, town or state university
 35 or the Arizona exposition and state fair board.

36 ~~16.~~ 17. "Legal drinking age" means the age of twenty-one years or
 37 older.

38 ~~17.~~ 18. "License" means a license or an interim retail permit issued
 39 pursuant to the provisions of this title.

40 ~~18.~~ 19. "License fees" means fees collected for license issuance,
 41 license application, license renewal, interim permit issuance and license
 42 transfer between persons or locations.

43 ~~19.~~ 20. "Licensee" means a person who has been issued a license or an
 44 interim retail permit pursuant to the provisions of this title or a special
 45 event licensee.

~~20.~~ 21. "Manager" means a natural person who meets the standards required of licensees and has authority to organize, direct, carry on, control or otherwise operate a licensed business on a temporary or full-time basis.

~~21.~~ 22. "Off-sale retailer" means any person operating a bona fide regularly established retail liquor store selling spirituous liquors, wines and beer, and any established retail store selling commodities other than spirituous liquors and engaged in the sale of spirituous liquors only in the original unbroken package, to be taken away from the premises of the retailer and to be consumed off the premises.

~~22.~~ 23. "On-sale retailer" means any person operating an establishment where spirituous liquors are sold in the original container for consumption on or off the premises or in individual portions for consumption on the premises.

~~23.~~ 24. "Person" includes a partnership, limited liability company, association, company or corporation, as well as a natural person.

~~24.~~ 25. "Premises" or "licensed premises" means the area from which the licensee is authorized to sell, dispense or serve spirituous liquors under the provision of the license.

~~25.~~ 26. "Registered mail" includes certified mail.

~~26.~~ 27. "Registered retail agent" means any person who is authorized pursuant to section 4-222 to purchase spirituous liquors for and on behalf of himself and other retail licensees.

~~27.~~ 28. "Repeated acts of violence" means two or more acts of violence occurring within seven days, three or more acts of violence occurring within thirty days or acts of violence occurring with any other similar frequency which the director determines to be unusual or deserving of review.

~~28.~~ 29. "Sell" includes soliciting or receiving an order for, keeping or exposing for sale, directly or indirectly delivering for value, peddling, keeping with intent to sell and trafficking in.

~~29.~~ 30. "Spirituous liquor" includes alcohol, brandy, whiskey, rum, tequila, mescal, gin, wine, porter, ale, beer, any malt liquor or malt beverage, absinthe, a compound or mixture of any of them or of any of them with any vegetable or other substance, alcohol bitters, bitters containing alcohol, any liquid mixture or preparation, whether patented or otherwise, which produces intoxication, fruits preserved in ardent spirits, and beverages containing more than one-half of one per cent of alcohol by volume.

~~30.~~ 31. "Vehicle" means any means of transportation by land, water or air, and includes everything made use of in any way for such transportation.

~~31.~~ 32. "Vending machine" means a machine that dispenses merchandise through the means of coin, token, credit card or other nonpersonal means of accepting payment for merchandise received.

~~32-~~ 33. "Veteran" means a person who has served in the United States air force, army, navy, marine corps or coast guard, as an active nurse in the services of the American red cross, in the army and navy nurse corps in time of war, or in any expedition of the armed forces of the United States, and who has received a discharge other than dishonorable.

~~33-~~ 34. "Voting security" means any security presently entitling the owner or holder of the security to vote for the election of directors of an applicant, licensee or controlling person.

~~34-~~ 35. "Wine" means the product obtained by the fermentation of grapes or other agricultural products containing natural or added sugar or any such alcoholic beverage fortified with grape brandy and containing not more than twenty-four per cent of alcohol by volume.

Sec. 2. Section 4-205.04, Arizona Revised Statutes, is amended to read:

4-205.04. Domestic farm winery or domestic microbrewery license; issuance; regulatory provisions; retail site

A. The director may issue a domestic farm winery or domestic microbrewery license to any domestic farm winery or domestic microbrewery. Each location which engages in producing and bottling these products must obtain a separate domestic farm winery or domestic microbrewery license, but both such licenses may be issued for a common location. The licensee may not transfer the domestic farm winery or domestic microbrewery license from person to person or from location to location.

B. An applicant for a domestic farm winery or domestic microbrewery license ~~shall~~, at the time of filing the application for the license, **SHALL** accompany the application with the license fee. Persons holding a domestic farm winery or domestic microbrewery license shall report annually at the end of each fiscal year, at such time and in such manner as the director may prescribe, the amount of wine or beer manufactured by them during the fiscal year. If the total amount of wine or beer manufactured during the year exceeds the amount permitted annually by the license, the licensee shall apply for and receive an in-state producer's license.

C. Notwithstanding any other statute, a licensed domestic farm winery may sell **AND DELIVER** wine produced or manufactured on the **LICENSED** premises in the original container for consumption on or off the premises and may make sales and deliveries of wine to persons licensed to sell wine under this title. ~~IF ALL OF THE FOLLOWING APPLY:~~

1. **THE PURCHASER OF THE WINE PROVIDED THE DOMESTIC FARM WINERY EITHER:**
 - (a) **VERIFICATION THAT THE PURCHASER WAS OF LEGAL AGE TO PURCHASE ALCOHOL.**
 - (b) **VERIFICATION OF THE PURCHASER'S LICENSE TO SELL WINE.**

1 2. THE SHIPPING CONTAINER IN WHICH THE WINE IS SHIPPED IS MARKED TO
2 REQUIRE THE SIGNATURE ON DELIVERY OF AN ADULT WHO IS OF LEGAL AGE TO PURCHASE
3 ALCOHOL AND DELIVERY CONFIRMATION.

4 3. THE DOMESTIC FARM WINERY SHIPS TO A RESIDENTIAL OR BUSINESS
5 ADDRESS.

6 D. NOTWITHSTANDING ANY OTHER STATUTE, a licensed domestic farm winery
7 may serve wine produced or manufactured on ~~the~~ A LICENSED premises for the
8 purpose of sampling the wine.

9 ~~D.~~ E. A licensed domestic farm winery is subject to ~~all~~ BOTH of the
10 following requirements:

11 1. The winery shall produce not less than two hundred gallons and not
12 more than ~~seventy-five~~ FIFTY thousand gallons of wine annually from grapes or
13 other suitable agricultural products. ~~of which at least seventy-five per~~
14 ~~cent are grown in this state. The director may allow a percentage of~~
15 ~~out-of-state agricultural products greater than twenty-five per cent in wine~~
16 ~~manufactured or produced by a licensed domestic farm winery if the licensed~~
17 ~~domestic farm winery can demonstrate to the satisfaction of the director that~~
18 ~~sufficient in-state agricultural products are not available because of an~~
19 ~~unexpected failure of suitable in-state crops due to natural causes. The~~
20 ~~exemption shall remain in effect only for the period of time during which~~
21 ~~such shortages actually exist.~~

22 2. The winery may purchase and sell wine produced from ~~a~~ ANOTHER
23 LICENSED domestic farm winery if the retail sale of the wine is conducted
24 from the same ~~site~~ LICENSED PREMISES as the location of the winery.

25 ~~E.~~ F. Notwithstanding any other statute, a licensed domestic
26 microbrewery may sell beer produced or manufactured on the premises for
27 consumption on or off the premises and may make sales and deliveries of beer
28 to persons licensed to sell beer under this title, including wholesalers
29 licensed under this title. A licensed domestic microbrewery may serve beer
30 produced or manufactured on the premises for the purpose of sampling the
31 beer. A licensed domestic microbrewery is subject to all of the following
32 requirements:

33 1. The microbrewery shall produce not less than ten thousand gallons
34 of beer in each year following the first year of operation.

35 2. The microbrewery shall not produce more than three hundred ten
36 thousand gallons of beer annually.

37 3. If retail operations are conducted in conjunction with the
38 microbrewery, these retail operations shall be conducted from the same site
39 as the location of the microbrewery.

40 4. The microbrewery may sell other spirituous liquor products if:

41 (a) The microbrewery holds an on-sale retail license.

42 (b) The retail sale of the spirituous liquor is on or adjacent to the
43 premises of the microbrewery.

1 ~~F.~~ G. A person who holds a domestic microbrewery license that meets
2 the requirements of this section and who is not otherwise engaged in the
3 business of a distiller, vintner, brewer, rectifier, blender or other
4 producer of spirituous liquor in any jurisdiction may hold other on-sale
5 retail licenses. The person shall purchase all spirituous liquor for sale at
6 the other on-sale retail premises from wholesalers who are licensed in this
7 state.

8 ~~G.~~ H. The director shall adopt rules in order to administer this
9 section.